

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

MAR 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21 and 94 of the) WT Docket No. 94-148
Rules to Establish a New Part 101)
Governing Terrestrial Microwave)
Fixed Radio Service)

To: The Commission

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REPLY COMMENTS
OF
UNION TELEPHONE COMPANY

Union Telephone Company ("Union"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits the following Reply Comments on the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

Introduction

1. Union operates a local telephone company and cellular system operating throughout the states of Utah,

^{1/} In The Matter of Reorganization and Revision Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, WT Docket No. 94-148, Notice of Proposed Rule Making, adopted December 9, 1994, 60 Fed. Reg. 2722 (January 11, 1995), Order, DA95-140, extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

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Colorado and Wyoming. Union also operates a point-to-point microwave system to more efficiently carry voice and data traffic generated by the Domestic Public Cellular Radio Telecommunications Service. Union also uses its point-to-point microwave system to link its cellular facilities from one state to another in areas well known for their high altitudes and mountainous terrain. Consequently, point-to-point microwave communications is the only viable and reliable means of connecting and switching its cellular traffic. Accordingly, it has a keen interest in the outcome of this proceeding, as the proposed Part 101 will govern Union's continued and future operations of its point-to-point microwave facilities.

2. Union has had an opportunity to review the Comments filed in this proceeding, and is in agreement with many of the recommendations espoused by numerous parties. Specifically, Union agrees that further streamlining of the proposed application rules for Part 21 applicants is necessary and achievable. Moreover, Union supports equitable treatment between Part 21 and Part 94 microwave licensees, and supports the recommendations that certain procedural and operational rules be equally applied to both services. Union, therefore, takes this opportunity to

submit this brief set of Reply Comments for the Commission's consideration.

Discussion

3. Union generally supports the Commission's proposal to consolidate the common carrier and private operational-fixed microwave rules. It agrees that the similarities in the overall function and operation of the Part 21 and Part 94 microwave services necessitate that simpler and consistent rules be promulgated.

A. There is Support to Eliminate the Part 21 Filings that Generally Accompany a Point-to-Point Microwave Application

4. First, Union supports the Commission's proposal to eliminate the onerous showings that must accompany a Part 21 microwave application. Union agrees that the financial showing, the public interest showing, the local franchise authority, the control and maintenance showing and certification as well as the vertical profile and site availability showing are not necessary documents for the Commission to grant a Part 21 microwave application. In this regard, Union agrees with the comments filed by common

carriers who also support elimination of these showings.^{2/} Union agrees that these filings are burdensome. Moreover, much of the information contained in a carrier's Section 214 application and the accompanying tariff provides the same information as sought in these showings. Accordingly, Union disagrees with Telephone and Data Systems, Inc. ("TDS") that the public interest exhibit should continue to be required.^{3/} In its opinion, these showings provide redundant information already on file with the Commission.

B. The Commission Must Adopt Uniform Application Procedures and Forms for Part 21 and Part 94 Applicants

5. Union also supports the Comments of BellSouth which seeks the elimination of FCC Form 494A. This form is used to certify that the construction of the Part 21 microwave facilities is complete. Although a mere certification, it too requires a separate filing fee of \$180. Union sees no utility in the purpose of this form. NYNEX correctly stated that this form cannot be used to

^{2/} Comments of GTE at 12-13, Telecom Services Group, Inc. at 7, and ALLTEL Mobile Communications, Inc. at 2. See also, Comments of Airtouch Communications, Inc. at 3, E.F. Johnson at 2 and Digital Microwave Corporation ("DMC") at 3. For the same reasons enunciated herein, Union also supports DMC's suggestion to eliminate FCC Form 430, the Part 21 Licensee Qualification Report (at 5).

^{3/} Comments of TDS at 2.

modify information contained on FCC Form 494 and does not provide any additional information already placed on public notice. Therefore, the form serves no useful purpose and is redundant.^{4/} Union agrees.

6. Moreover, in the common carrier industry, it is presumed that once a service certificated and tariffed, the carrier is capable of offering service to public (i.e., the facilities are constructed and operational). Therefore, the Commission's evidence of construction completion and operational status is the Section 214 application and tariff filings.

7. Furthermore, the application process of both Part 21 and Part 94 should be uniform. Part 94 licensees are not required to certify that their facilities are constructed. The Part 94 rules simply state that failure to timely construct will result in automatic license cancellation.^{5/} The Part 94 service advocates self-policing and has worked well for the industry. Rather than extending this certification process to Part 94 users as

^{4/} Comments of NYNEX at 2-3. See also, Comments of GTE seeking revision of FCC Form 494 and 494A to accommodate electronic filing (at 13), and Airtouch Communications, Inc. recommending amendments to FCC Form 494 (at 3-4).

^{5/} 47 C.F.R. § 94.51 (b).

Pacific Bell suggests, elimination of this requirement altogether reduces this regulatory burden.^{6/}

8. Finally, numerous parties sought use of a single application form for both Part 21 and Part 94 applicants.^{7/} Union supports this recommendation, and believes that a uniform application will best serve the Commission and its staff since all the applications are now being processed in Gettysburg, Pennsylvania.

C. Consistent Construction and Operational Requirements are Needed

9. Union opposes a reduction in the construction period for Part 21 point-to-point microwave facilities from 18 months to 12 months as proposed in the NPRM.^{8/} Union agrees with other common carrier entities that microwave systems require long-term planning and construction, especially for Part 21 facilities where microwave links are crucial in a carrier's overall switching and communications

^{6/} See Comments of Pacific Bell et. al. at 4.

^{7/} Comments of Comsearch at 3, E.F. Johnson Company at 2, Pacific Bell et. al. at 4 and National Spectrum Managers Association Inc. and Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association at 10-14.

^{8/} NPRM at 63 (proposed Section 101.63 (a)).

traffic transfer.^{9/} The Commission has provided no rationale for the reduction in the construction period. Accordingly, rather than reducing the construction requirements for Part 21 licensees, Union supports extending the 18-month construction period for Part 94 licensees.

10. Union also agrees that uniform rules governing the commencement of construction and operation should be established. Under Part 94, the applicant can begin construction once the application is filed (but at the applicant's own risk). However, Part 21 applicants are precluded from commencing construction or operation until the applications have been granted. Several common carriers sought codification of the Part 21 Blanket Special Temporary Authority ("BSTA") to allow Part 21 applicants to construct and begin operation of their microwave facilities while their applications are being processed at the Commission.^{10/} Union has benefited from the BSTA policy in

^{9/} Comments of GTE at 9, Cellular Communications Puerto Rico, Inc. at 6, See also, Comments of Part 94 licensees: UTC at 9, Alcatel at 3, Western Multiplex at 4, NSMA and TIA at 33-34, Wincomm at 7, proposing a two-year construction period.

^{10/} Comments of AT&T Corporation at 1, BellSouth at 1-4, Cellular Communications of Puerto Rico, Inc. at 7 and Southwestern Bell Communications, Inc. at 5. See also, Comments of NSMA and TIA supporting pre-authorization construction for common carriers at 16.

the past and supports codification of this policy for Part 21 licensees.

Conclusion

11. The consensus of the commenters indicates that this proceeding is crucial to elimination of unnecessary regulations. However, further streamlining by consolidating and applying the same regulations to both services can be achieved with the adoption of minor recommendations suggested.

WHEREFORE, THE PREMISES CONSIDERED, Union Telephone Company respectfully requests that the Commission act upon its Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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